

**BEFORE THE**  
**STATE OF CALIFORNIA**  
**OCCUPATIONAL SAFETY AND HEALTH**  
**APPEALS BOARD**

In the Matter of the Appeal of:

SAN FRANCISCO OPERA ASSOCIATION  
301 Van Ness Avenue  
San Francisco, CA 94102

Employer

Docket No. 00-R1D1-2411

**DECISION AFTER  
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having granted the petition for reconsideration filed in the above-entitled matter by Pamela Dale, an affected employee with party status in this matter, makes the following decision after reconsideration.

**JURISDICTION**

On July 5, 2000, the Division of Occupational Safety and Health (the Division) conducted a complaint inspection at a place of employment maintained by San Francisco Opera Association (Employer) in San Francisco, California, at 301 Van Ness Avenue, the War Memorial Opera House (Opera House or site).

On September 18, 2000, the Division issued to Employer a citation alleging a regulatory violation of section 14308(b) of Title 8, California Code of Regulations<sup>1</sup> [employee access to the log and summary of occupational injuries and illnesses (Log 200)] with a proposed civil penalty of \$300.

Employer filed a timely appeal contesting the existence of the alleged violation, the reasonableness of the time allowed to abate the violation, and the amount of the proposed civil penalty.

On March 19, 2002, a hearing was held before Bref French, a Board Administrative Law Judge (ALJ) regarding Employer's appeals in San Francisco, California. Susan Ansberry, Attorney at Law represented Employer and Christopher Grossgart, Staff Counsel represented the Division. In addition to Employer and the Division, the parties to the proceeding included affected

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<sup>1</sup> Unless otherwise specified all section references are to Title 8, California Code of Regulations.

employee Pamela Dale (Dale) and Nora Heiber of the American Guild of Musical Artists (AGMA), a union representing affected employees. At the hearing, Employer amended its appeal from the citation to contest only the abatement requirements.

All parties, excepting AGMA, submitted post-hearing briefs and, on June 25, 2002, the ALJ issued a written decision granting Employer's appeal.

On July 8, 2002, Dale petitioned the Board for reconsideration of the ALJ's decision. Employer filed a response to the petition, and on August 27, 2002, the Board took Dale's petition under submission and stayed the ALJ's decision.

### **EVIDENCE**

No witnesses testified at the hearing and only the documents demonstrating that the Appeals Board had jurisdiction to conduct the hearing (Division Exhibit 1), and the proposed penalty worksheet used to calculate the penalty (Division Exhibit 2) were admitted as evidence.

Employer stipulated that Dale had requested that Employer make the Log 200 available pursuant to section 14308(b) and that, in response to the request, it provided her with a copy of the log from which the names of employees with injuries or illnesses recorded thereon had been redacted (removed).

### **ISSUE**

Did Employer have to furnish Dale with the names of employees listed on the Log 200 to abate the section 14308(b) violation?

### **FINDINGS AND REASONS FOR DECISION AFTER RECONSIDERATION**

The same issue was raised in *Department of Corrections, California Medical Facility*, Cal/OSHA App. 97-1861, Decision After Reconsideration (Oct. 29, 1999) and a companion case decided the same day, *CSU Dominquez Hills*, Cal/OSHA App. 98-1799, Decision After Reconsideration (Oct. 29, 1999).

In the lead case, *Department of Corrections, California Medical Facility*, *supra*, the Board concluded that:

...employees ...have a legitimate right of privacy to the medical information maintained on the Log 200; that there is no compelling state interest to balance against this constitutionally protected right to privacy; and that there is a feasible, less intrusive

alternative available to serve the safety and health interests of the employees (provide the Log with the names redacted). (*Id.* At p. 10.)

The Board adopted its *Department of Corrections* reasoning and conclusion in arriving at the same result in *CSU Dominquez Hills, supra*. The Log 200 regulations that were the subject of those Decisions After Reconsideration were still in effect when Petitioner Dale requested access to Employer's Log 200.<sup>2</sup> Dale has presented no authority demonstrating that those cases were wrongly decided. We find no basis for applying a different rule in this case. Accordingly, we affirm the ALJ's decision granting Employer's appeal.

### **DECISION AFTER RECONSIDERATION**

The petition of Pamela Dale is denied. Employer's appeal from the citation's abatement requirement for violation of section 14308(b) is granted. The ALJ's decision is affirmed and reinstated.

MARCY V. SAUNDERS, Member  
GERALD PAYTON O'HARA, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: May 29, 2003

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<sup>2</sup> Effective January 15, 2002, the former Log 200 regulations were repealed and replaced by new regulations (§§ 14300-14300.48). Under the new regulations, an employer is not required to enter the names of ill or injured employees on what is now called the Log 300 in certain "privacy concern cases" specified in sections 14300.29(b)(6)-(9). However, an employer is required to log all other employee names and may not remove them from the log before providing it to a requesting employee, former employee or employee representative (§ 14300.35(b)(2)(D)).